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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/843,589	04/25/2001	John Anthony Bruckner	113748-5764US	8739
27189	7590	10/09/2008		
PROCOPIO, CORY, HARGREAVES & SAVITCH LLP			EXAMINER	
530 B STREET			SHANG, ANNAN Q	
SUITE 2100				
SAN DIEGO, CA 92101			ART UNIT	PAPER NUMBER
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			10/09/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@procopio.com

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**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 09/843,589	<b>Applicant(s)</b> BRUCKNER ET AL.
<b>Examiner</b> ANNAN Q. SHANG	<b>Art Unit</b> 2623

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 09 July 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  
 NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13. ☐ Other: \_\_\_\_\_.

/Annan Q Shang/  
Primary Examiner, Art Unit 2623

Continuation of 11, does NOT place the application in condition for allowance because: With respect to the rejection of the last office action, Applicant discusses the prior arts of record, the claimed invention and various portions of applicant's disclosure, disagree with the 103(a) rejection of the combination of references and disagrees as to the teaching of function(s) of specific units within the various references to meet some claimed limitations (see page 17+ of Applicant's Remarks).

In response, Examiner notes Applicant's arguments, the prior arts of record meet all the claim limitations. As discussed in the last office action, the Examiner addressed all the claims limitations. The primary prior art of record, Barone discloses an interactive enabling system (see 20 in figure 3) for managing interactive program content (interactive content-- [0031], lines 1-5) associated with enhanced program content (enhanced program [0031], lines 1-5) and interactive commercial content (interactive content--[0044], lines 1-7) associated with commercial spots (commercial slots during a particular program [0035], lines 7-10); Barone further discloses that the system comprising: an interactive enabling device (ITV receiver 20, fig.3) coupled for receiving a broadcast stream (TV signal [0026], lines 1-8), the broadcast stream includes the enhanced program content (enhanced program- interactive commercial content [0031] and [0044]) in series with the commercial spots (commercial slots during a particular program, [0035], lines 7-10), the broadcast stream further including commercial pre-triggers (URL link, trigger, or any other ITV data is pre-inserted/preloaded into the program being broadcast--[0014], lines 1-6 and [0026], lines 1-8) and interactive commercial triggers (embedded commands that instructs ITV receiver to begin displaying the downloaded content--[0050]) for retrieving the interactive commercial content (for preloading/precaching interactive commercial contents [0044], lines 1-7); and at least one interactive content server (32, fig.3) coupled for communicating with an interactive control application in the interactive enabling device (interactive enabling device, ITV receiver 20 in figure 3, is already programmed to automatically establish a link with the interactive content server upon the receipt of any ITV data i.e., interactive commercial triggers [0014], lines 7-12, [0028], lines 1-9); where the interactive enabling device (ITV receiver 20 in figure 3) executes the interactive control application (inherently disclosed as addressed in the limitation discussed above) to manage the retrieval of the interactive program (corresponding TV segment) and commercial content (television commercial, 0027, lines 1-6) from the at least one interactive content server (32 in figure 3) in response to the program and commercial pre-triggers and make available the interactive program and commercial content in response to the interactive program and commercial triggers (Desired content is delivered to ITV receiver from the content server, upon receipt of commercial pre-triggers/ITV data, and preloaded/precached for subsequent presentation to the user, 0027 and 0029. Then embedded commands/commercial triggers instruct ITV receiver to begin displaying the downloaded content, 0049 and 0050), wherein the interactive enabling device (ITV receiver 20 in figure 3) is operable to respond to a commercial pre-trigger (URL link, trigger, or any other ITV data is pre-inserted/preloaded into the program being broadcast, 0014, lines 1-6 and 0026, lines 1-8) embedded in the enhanced program content (the ITV data is embedded in the TV signal, 0043, lines 1-8). Barone meets the above discussed claim limitations, however, Barone is silent as to where the broadcast stream further includes program pre-triggers and interactive program triggers for retrieving the interactive program. However in the same field of endeavor this deficiency in Barone is disclosed in Kalluri, which discloses a broadcast stream (AVI signal) including program pre-triggers (trigger command for loading the interactive program) and interactive program triggers for retrieving the interactive program (trigger command for playing the interactive program--column 2, lines 30-53, column 4, lines 56-67 and column 5, lines 21-24). Barone as modified by Kalluri fail to disclose that the interactive control application includes a gatekeeper function for selectively retrieving interactive program and commercial content in response to recognized interactive program and commercial triggers. However, in the same field of endeavor, Andrade discloses that the interactive control application includes a gatekeeper function ([26], lines 1-13) for selectively retrieving interactive program (interactive TV trigger 112 is used to selectively retrieve an interactive program and commercial content from the currently tuned to TV broadcast stream 108, 0020, lines 9-14) and commercial content in response to recognized interactive program and commercial triggers (paragraph 0028, lines 7-14). Barone, Kalluri and Andrade disclose an interactive enabling system and method for managing interactive program and commercial content, but silent as to where the interactive enabling device is configured for receiving and responding to the program pre-triggers, the interactive program triggers, the commercial pre-triggers, and the interactive commercial triggers embedded in the broadcast stream to ensure that the interactive program and commercial content do not overlap and interfere with each other. In analogous art, (ATVEF Spec.), discloses that the interactive enabling device is configured for receiving and responding to the program pre-triggers, the interactive program triggers, the commercial pre-triggers, and the interactive commercial triggers embedded in the broadcast stream to ensure that the interactive program and commercial content do not overlap and interfere with each other (page 28, paragraphs 7 and 8). When a new enhancement (for example interactive commercial content) is being received at the same time as an existing enhancement (interactive program content) is being displayed, and the new enhancement delivers its first trigger, the client ignores the new enhancement trigger until the existing enhancement has been completed, thereby preventing interactive content overlap and interfere. Barone, Kalluri, Andrade and ATVEF Spec., is silent as to "...pre-triggers for a segment corresponding to a particular type of communication link speed..." however in analogous art, Markel discloses that the interactive enabling device is configured for receiving interactive program and commercial pre-triggers that were inserted into the broadcast stream by the broadcast sponsor at a specific time in advance of when the interactive program and commercial content is needed, based on estimates for communication link speed. Markel further groups triggers for various attributes of the video stream (figs.1-8, col.1, line 66-col.2, line 21, line 53-col.3, line 4, col.3, line 36-col.4, line 22, col.6, lines 8-62). Markel teaches the claimed limitations i.e., the pre-fetching of enhancement information to accommodate access latencies. Latency is inherently dependent upon communication link speed and/or particular the type of communication link speed. If there was no latency the downloading of the content would occur instantaneously. It is the communication link speed and type that determines the access latency, as the time required to download and access the file is directly related to the download speed and type of communication. Therefore, Markel's system determines a communication type/speed, inserts triggers that causing pre-fetching of the enhancement information to accommodate access latencies, which meets the amended claimed limitations as discussed below. As clearly discussed above and also in the last office action, the prior arts of record meet all the claims limitations; the finality of the last office action, is proper and hereby maintained.

